IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2958 OF 2004

Sanjeev C. Chavan ..Applicant

Vs.

1. Subodh N. Pathak and anr. ..Respondents

Mr. Amit J. Pai for the applicant.
Mr. S.R. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 18, 2007.

P.C.:

1. Heard Mr. Pai the learned counsel for the applicant who is the original complainant in Criminal Case No. 1470/S/2002 filed before the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The said complaint has been dismissed and the accused came to be acquitted from the offence punishable under Section 138 of the said Act as per the order dated 5/3/2004. Hence, this application for special leave to appeal

under Section 387(4) of Cr.P.C.

2. As per the complainant he had worked with the coaching classes run by the accused and after putting in about 8 to 10 years of association they decided to separate and in consideration by way of goodwill an amount of Rs.2,50,000/- was agreed to be paid to him by the accused. An amount of Rs.30,000/- was paid in cash and two cheques, one for Rs.1,25,000/- and the second for Rs.91,397/- drawn in his favour were handed over to him by the accused. The first cheque was encashed, but the second cheque was dishonoured and, therefore, he had filed the complaint before the learned Metropolitan Magistrate which came to be dismissed.

3. During the course of trial, both the parties adduced evidence, oral as well as documentary. As per the accused he had issued the cheques by way of goodwill and on the condition that in the same locality where Nisha Classes were being run, the complainant would not start any coaching classes and this condition was agreed by the complainant. The

first cheque was encashed and thereafter the complainant allegedly started the coaching classes in the same locality and, therefore, the accused issued a notice to the complainant calling upon him not to deposit the second cheque as he had acted in breach of the agreement and inspite of this notice, the complainant proceeded to deposit the second cheque which was dishonoured. The learned Judge of the trial court has accepted the defence of the accused. He has also relied upon the order passed by the City Civil Court in Notice of Motion bearing No. 4345 of 2003. The learned counsel for the applicant has now brought to the notice of this court that the S.C. Suit No.5208/01 was subsequently dismissed on 22/2/2005. The City Civil Court held that the agreement between the parties putting a ban on the complainant not to run his coaching classes in the said locality where Nisha Classes were being run cannot be an enforceable contract in law and, therefore, the complainant was not entitled for a permanent injunction against the defendant i.e. the present complainant.

4. By accepting the defence of the accused the

learned Judge of the trial court recorded a finding that there was no enforceable liability or legal liability in discharge of which the second cheque was bounced and when the complainant was specifically advised by a notice not to deposit the cheque. The complainant initially denied to have received such a notice, but while in the witness box he admitted that the notice was received along with the reply to the statutory notice. This defence by way of an after thought has been held against the complainant and the learned Judge has drawn inference that the notice was received by the complainant before the second cheque was presented for encashment.

5. The reasoning set out by the trial court in support of the order of acquittal does not call for reconsiderations by this court and, therefore, there is no case made out to grant leave.

6. Hence, the application is rejected.

(B.H. Marlapalle,J.)